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No. 90-684

Supreme Court, U.S.
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IN THE

# Supreme Court of the United States

October Term, 1990

CLAWZELLE WIGGINS,
*Petitioner,*

vs.

CHRYSLER CORPORATION; ACUSTAR, INC.; INTERNATIONAL UNION, UNITED AUTOMOBILE AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) AND ITS LOCAL 1435,
*Respondents.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

## BRIEF IN OPPOSITION OF RESPONDENTS CHRYSLER CORPORATION AND ACUSTAR, INC.

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## QUESTIONS PRESENTED FOR REVIEW

1. Whether the Sixth Circuit properly found that Petitioner's failure to exhaust internal union remedies would not be excused?

2. Whether the District Court properly denied Petitioner's request for a stay when the internal union remedies Petitioner sought to exhaust during the pendency of the stay were already time-barred?

3. Whether the Sixth Circuit properly found that Petitioner failed to establish a *prima facie* case of race discrimination under Title VII of the Civil Rights Act of 1964 where Petitioner failed to introduce evidence of dissimilarly treated white employees?

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## PRAYER

The Respondents Chrysler Corporation and Acustar, Inc. respectfully request that this Court deny the Petition for Writ of Certiorari seeking review of the Sixth Circuit's decision in this case. The decision is unreported.

## STATEMENT OF THE CASE

Respondents accept the facts as stated by the District Court, adopted by the Sixth Circuit and summarized in the UAW's Brief in Opposition.

## REASONS FOR DENYING THE WRIT OF CERTIORARI

### I. THE SIXTH CIRCUIT PROPERLY FOUND, ON THE UNDISPUTED FACTS BEFORE IT, THAT PETITIONER'S FAILURE TO EXHAUST INTERNAL UNION REMEDIES WOULD NOT BE EXCUSED.

Respondents adopt as if fully rewritten herein the argument contained on pages 3-5 of Respondent UAW's Brief in Opposition as it pertains to Petitioner's failure to exhaust internal union remedies.

### II. THE DISTRICT COURT PROPERLY DENIED PETITIONER'S REQUEST FOR A STAY BECAUSE THE INTERNAL UNION REMEDIES PETITIONER SOUGHT TO EXHAUST DURING THE PENDENCY OF THE STAY WERE ALREADY TIME-BARRED.

Respondents adopt as if fully rewritten herein the argument contained on page 5 of Respondent UAW's Brief in Opposition as it pertains to the District Court's denial of a stay.

## III. THE SIXTH CIRCUIT PROPERLY FOUND THAT PETITIONER FAILED TO ESTABLISH A *PRIMA FACIE* CASE OF RACE DISCRIMINATION UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 BECAUSE PETITIONER FAILED TO INTRODUCE EVIDENCE OF DISSIMILARLY TREATED WHITE EMPLOYEES.

In *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), this Court described an employee's basic burden of proof in a Title VII case alleging discriminatory treatment, stating:

> "The complainant in a Title VII trial must carry the initial burden under the statute of establishing a prima facie case of racial discrimination."

*McDonnell Douglas Corp. v. Green*, 411 U.S. at 802. Petitioner argued at trial that similarly situated white employees of Respondent with attendance records worse or as bad as his were not discharged. The District Court properly found that Petitioner failed to establish a *prima facie* case because the evidence failed to show that those employees to whom Petitioner compared himself were either (1) similarly situated, or (2) white.

Petitioner urges a review of the District Court and Court of Appeals opinions on the basis that "two whites with worse or comparable records were treated more leniently and were not discharged." The lower courts' examination of the record, however, revealed that:

> "Plaintiff has produced no evidence as to the race of these two employees . . . [and] . . . it does not appear from their attendance records that they were treated differently than the plaintiff."

Opinion and order, appendix page 19.

## CONCLUSION

Petitioner identifies no issue of legal conflict or undecided important question of federal law. Instead, the petition seeks re-evaluation of evidence clearly and fully considered by the District Court and reviewed and reheard by the Sixth Circuit Court of Appeals. Because Petitioner seeks only the re-examination of evidence evaluated in accordance with unchallenged legal standards, the petition for writ of certiorari should be denied.

Respectfully submitted,

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